

April 21, 2021

VIA EMAIL (regcomments@gcb.nv.gov)

Nevada Gaming Commission

Attn: Executive Secretary

RE: Consideration of proposed amendments to Nevada Gaming Commission Regulation 22.080 related to determination on the outcome of wagers for horse and other animal races

Churchill Downs Incorporated ("CDI"), as a leader in the horse racing industry and the owner of numerous racetracks, previously expressed concerns to the Nevada Gaming Commission (the "NGC") regarding booking wagers on horseracing in general and the request last year by Nevada race books to benefit themselves with respect to horseracing's premier events, including our events, such as the Kentucky Derby and Kentucky Oaks, by allowing them to merely take racing results information from a television broadcast intended for entertainment purposes and not licensed, sanctioned or authorized for wagering purposes. This approach exploited horseracing's premiere events, and was intended as leverage in contractual negotiations against CDI and others in the racing industry. The result of this action left Nevada customers with limited wagering opportunities, while depriving us and others like us with any returns for our content development and intellectual property.

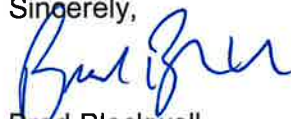
We understand that the NGC is now considering making a permanent change to Regulation 22.080 similar to last year's change, except now broadening the application to even more horseraces, in a further attack on our business, our industry and others. Once again, this is right before the Kentucky Derby and has to be interpreted as a direct affront to CDI, its intellectual property rights over its horseracing content, and the federal statutes that protect our commercial activities, including, without limitation, the Interstate Horseracing Act and the Sherman Act. Were Regulation 22.080 to be codified as proposed, it would be an unprecedented decision by a government entity to usurp for the benefit of certain of its constituents the intellectual property rights of others, in violation of federal law. Moreover, if Regulation 22.080 were to be amended in its much expanded form, as proposed by the Nevada Pari-Mutuel Association (the "NPMA"), the protected content taken, without license or compensation, for the benefit of Nevada race books would put each of the NPMA's members at substantial risk of claims by all horseracing venues and each and every participant in our industry's races. And, the stated purposes for obtaining content from out-of-state horseracing venues -- "to determine the outcome of wagers" - - does not support the broad overreach by the Regulation 22.080. There are many less intrusive ways to determine the outcome of a race or outcome of a wager than the wholesale taking of our protected content for the duration of a "nationally televised broadcast." That broadcast includes far more than just the results. The Nevada race books want the entertainment value AND the money to be generated by it from our broadcasts. They want the content, not just the results. They also want it for free and the NGC is being asked to give it to them, without regard to the legality of such an action.

The horseracing industry as a whole relies on wagering to fund the horseracing ecosystem, including the equine participants' welfare (*i.e.*, horses, jockeys, backside workers, and other staff employees), participant and bettor regulations, track operations, and funding purses to name a few. Booked wagers addressed with this proposed amendment by Nevada race books returns absolutely nothing to the horseracing industry, while the race books look to profit unfairly off the efforts and rights of others. Further, we are certain that Nevada customers want to wager into track pools and get access to all wager types at track odds without the limitations the Nevada race books put in place to cap their own exposure at the expense of their own customers. We believe that racetracks and horsemen should be fairly compensated for any wagers on the races that they produce consistent with their rights, including those granted to us and others under the Interstate Horseracing Act, the Copyright Act and the Sherman Act.

We also note that the NGC and the Nevada race books are further engaging in behavior that implicates, if not violates, state and federal law -- namely, engaging in concerted activities, without justification, to boycott our races, to demand reduced fees for accessing our races and the pari-mutuel pools we host, and to take our protected content for a commercial and competitive purpose (without license or compensation). Even putting aside the apparent direct conflict with the federal statutes implicated by the proposed Regulation and behavior of the NGC, the NPMA and the Nevada race books, the fact that NGC and the Nevada race books utilize an association, which has also pressed for a much expanded proposed Regulation, to collectively bargain and ultimately refuse to accept commercially offered terms, is further reason to object to the system of rules and regulations that Nevada has chosen to deploy to discriminate against the out-of-state horseracing market participants. We are not aware of the Nevada casinos using a similar cartel approach when negotiating or buying anything else on behalf of all casinos, and it should not be permitted here. We further believe that each Nevada race book that wants our content and access to our races should pay for it, just like every other racing outlet in the United States is required to do pursuant to federal law. To be clear, CDI does not consent to the use of its content and intellectual property for the purposes expressed in the proposed Regulation and the proposed expansion of that Regulation by the NPMA. We reserve all rights to pursue claims against any unauthorized user of such material, for any purpose, including the Nevada race books, and claims against the NGC, the NPMA or any other entity that facilitates such an unauthorized use.

We ask the NGC to deny the proposed amendments to Regulation 22.080. To do anything else would simply be perceived as nothing other than permitting one group of market participants to take what is not theirs so they can profit from it -- and to support that taking by action that will put those market participants and Nevada's gaming system in direct conflict with rights of others and the laws that are meant to be fair to all market participants. We appreciate your consideration to our concerns.

Sincerely,



Brad Blackwell

Senior Vice President, General Counsel